

**State of California
Office of Administrative Law**

In re:
Department of Fish and Wildlife

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:
Amend sections: 228
Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

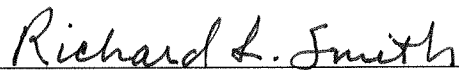
OAL File No. 2013-0618-02 E

The Department of Fish and Wildlife (Department) submitted this emergency action to amend the definition of suction dredging in title 14, California Code of Regulations, section 228(a) for purposes of Fish and Game Code sections 5653 and 5653.1. In this context, suction dredging or suction dredge mining is a method of vacuuming material from rivers, streams, or lakes for the extraction of minerals. There is currently a statutory moratorium on suction dredge mining pursuant to Fish and Game Code section 5653.1(b). The existing definition of suction dredging in section 228(a) is prescriptive and has resulted in members of the public evading compliance with the Fish and Game Code by modifying suction dredging equipment. The Department's proposed amendment to the definition of suction dredging closes the loophole in the current definition in order to allow the Department to enforce its regulatory and statutory authority over suction dredge mining activities.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/28/2013 and will expire on 12/27/2013. The Certificate of Compliance for this action is due no later than 12/26/2013.

Date: 6/28/2013



Richard L. Smith
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Charlton Bonham
Copy: Craig Martz

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

D: 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2013-0618-02E
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For use by Office of Administrative Law (OAL) only

ENDORSED FILED
IN THE OFFICE OF

2013 JUN 28 PM 1:48


 DEBRA BOWEN
 SECRETARY OF STATE

 2013 JUN 18 P 2:11
 OFFICE OF
 ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY FILE NUMBER (if any)

 AGENCY WITH RULEMAKING AUTHORITY
 Fish and Wildlife

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Suction Dredging; Use of Vacuum and Suction Dredge Equipment	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND Section 228, subdivision (a).
	REPEAL
TITLE(S) 14	

3. TYPE OF FILING

- | | | | |
|---|---|---|---|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | | <input type="checkbox"/> Other (Specify) _____ | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- | | | | |
|---|---|---|--|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input checked="" type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> §100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ |
|---|---|---|--|


6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- | | | |
|--|--|---|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

7. CONTACT PERSON Craig Martz	TELEPHONE NUMBER (916) 653-4681	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE


 TYPED NAME AND TITLE OF SIGNATORY
 Charlton H. Bonham, Director

DATE

June 17, 2013

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 28 2013

Office of Administrative Law

Amend California Code of Regulations, Title 14, Section 228, subdivision (a), to read:

§ 228. Suction Dredging.

The Department has adopted this Section and Section 228.5 pursuant to Fish and Game Code Section 5653.9, and to make specific and otherwise implement Fish and Game Code Section 5653, specifically. Pursuant to that authority, the Department finds that suction dredging subject to and consistent with the requirements of Sections 228 and 228.5 will not be deleterious to fish.

(a) Definitions.

~~(1) Suction dredging. For purposes of this Section 228 and Section 228.5, the use of any vacuum or suction dredge equipment (i.e. suction dredging) is defined as the use of a motorized suction system to vacuum material from the bottom of a river, stream or lake and to return all or some portion of that material to the same river, stream or lake for the extraction of minerals. These regulations do not apply to, prohibit or restrict nonmotorized recreational mining activities, including panning for gold. A person is suction dredging as defined when all of the following components are operating together:~~

~~(A) A hose which vacuums sediment from a river, stream or lake; and~~

~~(B) A motorized pump; and~~

~~(C) A sluice box.~~

~~(2) Motorized. For purposes of these regulations, "motorized" means a mechanical device powered by electricity or an internal combustion engine.~~

[No amendment to any other subdivision of Section 228 is proposed.]

NOTE: Authority cited: Sections 5653 and 5653.9, Fish and Game Code. Reference: Sections 5653 – 5653.9, Fish and Game Code.

June 7, 2013